

ORDINANCE NO. 2001-010

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; PERTAINING TO POTABLE WATER, WASTEWATER AND RECLAIMED WATER SPECIAL ASSESSMENTS; PROVIDING A TITLE; PROVIDING FOR DEFINITIONS; PROVIDING A PURPOSE; PROVIDING FOR FUNDING; PROVIDING FOR MUNICIPAL IMPROVEMENTS; PROVIDING FOR LANDOWNER PETITION PROCESS; PROVIDING FOR PERCENTAGE OF COST; PROVIDING FOR ASSESSMENTS; PROVIDING FOR AMENDING RESOLUTION; PROVIDING FOR ANNUAL ASSESSMENT ROLL; PROVIDING FOR LIEN OF ASSESSMENTS; PROVIDING FOR REVISIONS TO ASSESSMENTS; PROVIDING FOR PROCEDURAL IRREGULARITIES; PROVIDING FOR CORRECTIONS OF ERRORS AND OMISSIONS; PROVIDING FOR COLLECTION OF ASSESSMENTS; PROVIDING FOR ALTERNATIVE METHOD OF COLLECTION; PROVIDING FOR COLLECTION OF ASSESSMENTS ON GOVERNMENT PROPERTY; PROVIDING FOR DEFAULT ON ASSESSMENTS; PROVIDING FOR PAYMENT OF ASSESSMENTS; PROVIDING FOR SUPPLEMENTAL PROVISIONS; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners adopted Ordinance No. 94-10, as amended by Ordinance Nos. 92-52 and No. 97-13, which is codified in Chapter 27, Article VIII, of the Palm Beach County Code; and

WHEREAS, the Board of County Commissioners adopted Resolution 97-2152, which provides for the use of the uniform method of collecting non-ad valorem assessments in accordance with Section 197.3632, Florida Statutes; and

WHEREAS, Sections 125.01(q) and (r), Florida Statutes authorize the Board of County Commissioners to levy and collect special assessments for water, wastewater and reclaimed water Improvement Projects; and

WHEREAS, the Board of County Commissioners desires to clarify the process for initiating and implementing water, wastewater and reclaimed water Improvement Projects; and

WHEREAS, the Board of County Commissioners hereby exercises its authority to adopt this Ordinance under Chapter 125, Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1        **Section 1. Title.**

2            This Ordinance shall be known as the "Potable Water, Wastewater, and Reclaimed  
3    Water Special Assessment Ordinance."

4        **Section 2. Definitions.**

5            (a)        "Assessment" means a special assessment levied by the County pursuant to  
6    this Ordinance against properties specially benefiting from the construction or reconstruction  
7    of potable water, wastewater and/or reclaimed water facilities.

8            (b)        "Assessment Roll" means a roll approved by the County pursuant to this Ordinance  
9    for the purpose of levying special assessments.

10          (c)        "Assessment Unit" means the unit or criteria utilized to determine the  
11   assessment for each parcel of property. Assessment Units may include, but are not limited to,  
12   front footage, platted lots, or parcels of record.

13          (d)        "Assessable Costs" shall include, but are not limited to, construction costs  
14   and all attributable fees and expenses consisting of engineering, inspection, administration,  
15   drafting, obtaining and verifying easements, permitting, and surveying.

16          (e)        "Board" means the Board of County Commissioners of Palm Beach County,  
17   Florida.

18          (f)        "County" means Palm Beach County, Florida.

19          (g)        "Department" means the Palm Beach County Water Utilities Department.

20          (h)        "Government Property" means property owned by the United States, State of  
21   Florida, a county, municipality, special district or any of their agencies or political  
22   subdivisions.

23          (i)        "Improvement" means the construction or reconstruction of potable water,  
24   wastewater and/or reclaimed water facilities, and includes appurtenant facilities incidental  
25   thereto.

26          (j)        "Improvement Project" means a capital improvement project for the  
27   construction or reconstruction of potable water, wastewater and/or reclaimed water facilities  
28   initiated pursuant to this Ordinance.

29          (k)        "Property Owner" means any person, firm, partnership, corporation, or other



1 legal entity holding title to any property specially benefiting from Improvements initiated  
2 pursuant to this Ordinance.

3 (l) "Uniform Assessment Collection Act" means Sections 197.3632 and 97.3635,  
4 Florida Statutes, or any successor statutes, authorizing the collection of non-ad valorem  
5 assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated  
6 thereunder.

7 **Section 3. Purpose.**

8 This Ordinance is created in accordance with Section 125.01(r), Florida Statutes, and  
9 provides for the levying of Assessments upon properties which will specially benefit from the  
10 construction or reconstruction of potable water, wastewater and/or reclaimed water facilities  
11 and are located in an existing developed area within the Department's service area. This  
12 Ordinance shall not be used to construct potable water, wastewater and/or reclaimed water  
13 facilities within new developments.

14 **Section 4. Funding.**

15 Funding for assessable Improvements shall be derived from funds budgeted annually  
16 within the Department. Costs associated with Improvements shall be levied and collected as  
17 Assessments on property specially benefiting from such Improvements.

18 **Section 5. Municipal Improvements.**

19 Improvements may be provided within the unincorporated and incorporated areas of  
20 the County located within the service area of the Department. A municipality within the  
21 County may request Improvements within all or a specified portion of the incorporated area.  
22 The municipality shall initiate the request by adopting an ordinance granting authorization to  
23 the County to undertake the Improvement Project and for the Department to be the service  
24 provider. The municipal ordinance shall set forth the nature of the Improvements requested,  
25 the specific location for which authorization is given, and any financial or technical assistance  
26 the municipality is willing to provide in the accomplishment of the project. Upon receipt of a  
27 municipal ordinance, the request for Improvements shall be processed pursuant to the same  
28 procedures set forth in this Ordinance for similar Improvements.

29

1        **Section 6. Landowner Petition Process.**

2        At its option, the Board may establish a process by resolution which would permit  
3        Property Owners to petition for the initiation of Improvements pursuant to this Ordinance.  
4        Notwithstanding any petition process established pursuant to this section, the Board shall  
5        retain authority to impose Assessments against benefited properties without a petition.

6        **Section 7. Percentage of Cost.**

7        The percentage of cost to be repaid by Property Owners of specially benefited property  
8        for Improvements made pursuant to this Ordinance shall be one hundred (100) percent of the  
9        total Assessable Costs.

10       **Section 8. Assessments.**

11       (a)    Assessment resolution. If the Board decides to approve Improvements  
12       authorized by this Ordinance and to defray the expense thereof by levying one or more  
13       Assessments, the Board shall declare its intention to levy such Assessment(s) by resolution.  
14       The Assessment resolution shall:

15                (1)    describe the property to be located within the boundaries of the  
16       proposed Improvement Project;

17                (2)    describe the improvement proposed for funding from the proceeds  
18       of the Assessments;

19                (3)    estimate the Assessable Costs of the proposed Improvement Project;

20                (4)    describe the proposed method of apportioning the Assessable  
21       Costs among the parcels of property located within the boundaries of the proposed  
22       Improvement Project, such that the owner of any parcel of property can objectively determine  
23       the number of Assessment Units and the amount of the Assessment;

24                (5)    describe the provisions, if any, for acceleration and prepayment of  
25       Assessments; and

26                (6)    include specific findings that recognize the fairness of the  
27       apportionment methodology.

28       (b)    Assessment Roll. The Department shall prepare a preliminary  
29       Assessment Roll that contains the following information:

- 1 (1) a summary description of each parcel of property subject  
2 to the Assessment, which conforms to the description contained on the tax roll;
- 3 (2) the name of the owner of record of each parcel, as shown  
4 on the tax roll;
- 5 (3) the number of Assessment Units attributable to each  
6 parcel;
- 7 (4) the estimated maximum annual Assessment to become due in  
8 any fiscal year for each Assessment Unit; and
- 9 (5) the estimated maximum annual Assessment due in any  
10 fiscal year for each parcel.

11 (c) Filing of Assessment Resolution and Preliminary Assessment Roll. Copies of  
12 the Assessment resolution and preliminary Assessment Roll shall be on file and open to public  
13 inspection in the Department's Administration Building. The foregoing shall not be construed  
14 to require that the preliminary Assessment Roll be in printed form if the amount of the  
15 Assessment for each parcel of property can be determined by use of a computer terminal  
16 available to the public.

17 (d) Notice by publication. After filing the preliminary Assessment Roll in the  
18 Department's Administration Building, the Department shall publish once in a newspaper of  
19 general circulation within the County a notice stating that a public hearing of the Board will  
20 be held on a certain day and hour, not earlier than twenty (20) calendar days from such  
21 publication, at which hearing the Board will receive written comments and hear testimony  
22 from all interested persons regarding the adoption of the Assessment resolution. The  
23 published notice shall conform to the requirements set forth in the Uniform Assessment  
24 Collection Act.

25 (e) Notice by mail. In addition to the published notice required by this  
26 Ordinance, the Department shall provide notice of the proposed Assessment by first class mail  
27 to the owner of each parcel of property subject to the Assessment. The mailed notice shall  
28 conform to the requirements set forth in the Uniform Assessment Collection Act. Notices  
29 shall be mailed at least twenty (20) calendar days prior to the hearing to each Property Owner



1 at such address as shown in the County's property tax records. Notice shall be deemed mailed  
2 upon delivery thereof to the possession of the U.S. Postal Service. The Department may  
3 provide proof of such notice by affidavit. Failure of the owner to receive such notice due to  
4 mistake or inadvertence shall not affect the validity of the Assessment Roll nor release or  
5 discharge the obligation for the payment of an Assessment imposed pursuant to this  
6 Ordinance.

7 (f) Adoption of Assessment Resolution. At the time provided for in the mailed  
8 and published notices, or such time to which an adjournment or continuance may be taken, the  
9 Board shall receive written objections and hear testimony of interested persons and may then,  
10 or at any subsequent meeting of the Board, adopt the Assessment resolution which shall (a)  
11 confirm, modify or repeal the Assessment resolution with such amendments, if any, as may be  
12 deemed appropriate by the Board; (b) establish the maximum amount of the Assessment for  
13 each Assessment unit; (c) approve the Assessment Roll, with such amendments, if any, as may  
14 be deemed appropriate by the Board; (d) determine the method of collection. A copy of the  
15 Assessment resolution shall be recorded in the Official Records of Palm Beach County,  
16 Florida.

17 **Section 9. Amending Resolution.**

18 Upon completion of an Improvement Project, the Board may adopt a resolution  
19 amending the previously adopted preliminary Assessment Roll for the purpose of crediting to  
20 each Assessment the difference between the original Assessment approved and the  
21 proportionate share of the Assessable Costs to be paid by Assessment. The "amending  
22 resolution" shall be recorded in the Official Records of Palm Beach County, Florida.

23 **Section 10. Annual Assessment Roll.**

24 The Board shall provide notice and conduct a public hearing in accordance with the  
25 Uniform Assessment Collection Act prior to certification the annual Assessment Roll to the  
26 Tax Collector for collection purposes if, following the adoption of the preliminary Assessment  
27 Roll or subsequent assessment roll adopted by an amending resolution: (a) the Assessment for  
28 any parcel of property exceeds the maximum amount established in the notice provided  
29 pursuant to this Ordinance; (b) an Assessment is imposed against a property not previously

1 subject thereto; or (c) there is a change in the purpose of an Assessment or in the use of the  
2 revenue generated by such Assessment.

3 **Section 11. Lien of Assessments.**

4 Upon adoption of the Assessment resolution, Assessments shall constitute a lien  
5 against the assessed property equal in rank and dignity with the liens of all state, county,  
6 district or municipal taxes and other non-ad valorem Assessments. Except as otherwise  
7 provided by law, such lien shall be superior in dignity to all other liens, titles and claims, until  
8 paid. All liens shall bear interest at a rate not to exceed ten (10) percent per year from the date  
9 of acceptance of the Improvements, and may, by resolution, be made payable in not more than  
10 twenty (20) equal annual installments, if installments are approved by the Board.  
11 Assessments may be paid without interest at any time within thirty (30) days after the  
12 Improvements have been completed and accepted by the Board or its authorized  
13 representative(s). If an Assessment is not paid when due, there shall be additional interest at a  
14 rate of eighteen (18) percent per year, upon the due but unpaid installment(s) or portions  
15 thereof outstanding at the end of each month, added to the outstanding Assessment balance for  
16 those Assessments that are not being collected pursuant to the Uniform Assessment Collection  
17 Act. Assessments collected pursuant to the Uniform Collection Act shall be subject to the  
18 collection provisions of Chapter 197, Florida Statutes, as may be amended, including  
19 provisions relating to penalties for delinquent payment and issuance and sale of tax certificates  
20 and tax deeds for nonpayment.

21 **Section 12. Revisions to Assessments.**

22 If any Assessment made under the provisions of this Ordinance is either in whole or  
23 part annulled, vacated or set aside by the judgment of any court, or if the Board is satisfied  
24 that any such Assessment is so irregular or defective that the same cannot be enforced or  
25 collected, or if the Board has failed to include any property on the Assessment Roll which  
26 property should have been so included, the Board may take all necessary steps to impose a  
27 new Assessment against any property benefited by the improvement, following as nearly as  
28 may be practicable, the provisions of this Ordinance and in case such second Assessment is  
29 annulled, the Board may obtain and impose other Assessments until a valid Assessment is



1 imposed.

2 **Section 13. Procedural Irregularities.**

3 Any irregularity in the proceedings in connection with the levy of any Assessment  
4 under the provisions of this Ordinance shall not affect the validity of the same after the  
5 approval hereof, and any Assessment as finally approved shall be competent and sufficient  
6 evidence that such Assessment was duly levied, that the Assessment was duly made and  
7 adopted, and that all other proceedings adequate to such Assessment were duly had, taken and  
8 performed as required by this Ordinance. No variance from the directions hereunder shall be  
9 held material unless it is clearly shown that the party objecting was materially injured thereby.

10 **Section 14. Corrections of Errors and Omissions.**

11 (a) No act of error or omission on the part of the Board, Department, Property  
12 Appraiser, Tax Collector, Clerk or their respective deputies or employees, shall operate to  
13 release or discharge any obligation for payment of any Assessment imposed by the Board  
14 under the provisions of this Ordinance.

15 (b) The number of Assessment Units attributed to a parcel of property may be  
16 corrected at any time by the Department. Any such corrections shall first require notice to the  
17 affected Property Owner in the manner described in this Ordinance, providing the date, time  
18 and place that the Board will consider confirming the correction and offering the Property  
19 Owner an opportunity to be heard.

20 (c) After the Assessment Roll has been delivered to the Tax Collector in  
21 accordance with the Uniform Assessment Collection Act, any changes, modifications or  
22 corrections thereto shall be made in accordance with the procedures applicable to errors and  
23 insolvencies for ad valorem taxes.

24 **Section 15. Collection of Assessments.**

25 Unless directed otherwise by the Board and notwithstanding any provision in this  
26 Ordinance to the contrary, Assessments (other than Assessments imposed against Government  
27 Property) shall be collected pursuant to the Uniform Assessment Collection Act, and the  
28 County shall comply with all applicable provisions thereof.

29



1        **Section 16. Alternative Method of Collection.**

2        In lieu of using the Uniform Assessment Collection Act, the County may elect to  
3        collect Assessments by any other method authorized by law.

4        **Section 17. Government Property.**

5        (a)        To the extent permitted by law, the County shall provide Assessment bills by  
6        first class mail to the owner of each affected parcel of Government Property. The first bill, or  
7        accompanying explanatory material to the first bill, shall include (1) a brief explanation of the  
8        Assessment, (2) a description of the apportionment units used to determine the amount of the  
9        Assessment, (3) the number of Assessment Units attributable to the parcel, (4) the total  
10       amount of the parcel's Assessment for the appropriate period, (5) the location at which  
11       payment will be accepted, and (6) the date on which the Assessment is due.

12       (b)        Assessments imposed against Governmental Property shall be due on the  
13       same dates as Assessments against other property within the improvement area and, if  
14       applicable, shall be subject to the same discounts for early payment.

15       (c)        An Assessment shall become delinquent if it is not paid within thirty (30) days  
16       from the due date. The county shall notify the owner of any Government Property that is  
17       delinquent in payment of its Assessment within sixty (60) days from the date such Assessment  
18       was due. Such notice shall state that the County may initiate a mandamus or other appropriate  
19       judicial action to compel payment.

20       (d)        All costs, fees and expenses, including reasonable attorney fees and title  
21       search expenses, related to any mandamus or other action as described herein shall be  
22       included in any judgment or decree rendered therein. All delinquent owners of Government  
23       Property against which a mandamus or other appropriate action is filed shall be liable for an  
24       apportioned amount of reasonable costs and expenses incurred by the County, including  
25       reasonable attorney fees, in collection of such delinquent Assessments and any other costs  
26       incurred by the County as a result of such delinquent Assessments.

27       (e)        As an alternative to the foregoing, an Assessment imposed against  
28       Government Property may be collected on the bill for any utility service provided to such  
29       Governmental Property.

1        **Section 18. Default on Assessments.**

2        (a)        In the event the Board elects not to collect an Assessment pursuant to the  
3        Uniform Assessment Collection Act, failure to pay any installment of principal or interest or  
4        any part thereof when such installment is due and payable, shall cause without notice or other  
5        proceeding, all remaining unpaid installments to be immediately due and payable and subject  
6        to foreclosure. All costs, fees and expenses, including reasonable attorney fees and title search  
7        expenses, related to any foreclosure action as described herein shall be included in any  
8        judgment or decree rendered therein. At the sale pursuant to decree in any such action, the  
9        County may be the purchaser to the same extent as an individual person or corporation. The  
10       County may join in a single foreclosure action the collection of Assessments against any or all  
11       of the properties assessed in accordance with the provisions hereof. All delinquent Property  
12       Owners whose property is foreclosed shall be liable for an apportioned amount of reasonable  
13       costs and expenses incurred by the County and its agent, including reasonable attorney fees, in  
14       collection of such delinquent Assessments and any other costs incurred by the County as a  
15       result of such delinquent Assessments.

16       (b)        In lieu of foreclosure, any delinquent Assessment and the costs, fees and  
17       expenses attributable thereto, may be collected pursuant to the Uniform Assessment  
18       Collection Act; provided however, that (1) notice is provided to the owner in the manner  
19       required by law and (2) any existing lien of record on the affected parcel for the delinquent  
20       Assessment is supplanted by the lien resulting from certification of the Assessment Roll to the  
21       Tax Collector.

22       **Section 19. Payment of Assessments.**

23       Except as otherwise provided in this Ordinance, billing, receiving and accounting for  
24       the payment of all Assessments for Improvements made in accordance with this Ordinance  
25       shall be the responsibility of the Clerk of the Board. A record of payments and balances shall  
26       be kept for each property assessed. All payments received shall be deposited into the  
27       applicable Department fund. Assessments shall be payable at the time and manner set forth  
28       in the Assessment resolution adopted by the Board for such Improvements.



1        **Section 20. Supplemental Provisions.**

2        This Ordinance shall be deemed to provide a supplemental, additional, and alternative  
3        method of levying Assessments and shall not apply to Improvements done pursuant to any  
4        other law.

5        **Section 21. Savings Clause.**

6        This article shall not affect or impair the processing and implementation of any  
7        Improvements commenced under the provisions of Ordinance No. 91-41, as amended by  
8        Ordinance Nos. 93-26, or Ordinance 94-10, as amended by Ordinance Nos. 95-52 and 97-13.  
9        All projects initiated under such ordinances and all Assessments thereon shall continue in full  
10       force and effect until completed and fully paid.

11       **Section 22. Applicability.**

12       This Ordinance shall apply to the unincorporated and incorporated areas of the County  
13       located within the Department's service area as such service area may be amended from time  
14       to time.

15       **Section 23. Repeal of Ordinances.**

16       Ordinance Nos. 94-10, 95-52 and 97-13 are hereby repealed in their entirety. In  
17       addition, all local laws and ordinances in conflict with any provisions of this Ordinance are  
18       hereby repealed to the extent of such conflict.

19       **Section 24. Severability.**

20       If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any  
21       reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not  
22       affect the remainder of this Ordinance.

23       **Section 25. Inclusion in the Code of Laws and Ordinances.**

24       The provisions of this Ordinance shall become and be made a part of the Code of Laws  
25       and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be  
26       renumbered or relettered to accomplish such, and the word "ordinance" may be changed to  
27       "section", "article", or other appropriate word.

28

29

1        **Section 26. Effective Date.**

2            The provisions of this Ordinance shall become effective upon filing with the  
3 Department of State.

4            APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach  
5 County, Florida, on this the 13th day of March, 2001.

6            DOROTHY H. WILKEN, CLERK  
7            Board of County Commissioners  
8            By: Clemon A. Moore  
9            DEPUTY CLERK



PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

10            By: W. Newell  
11            Warren H. Newell, Chairman

12            APPROVED AS TO FORM AND  
13            LEGAL SUFFICIENCY

14            By: Lana Burke  
15            County Attorney

16            EFFECTIVE DATE: Filed with the Department of State on the 19 day of March, 2001.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28        G:\COMMON\ATTY\WPDATA\ENVIR\LBEEBE\WUD\specialassess.revisions.wpd

STATE OF FLORIDA, COUNTY OF PALM BEACH  
I, DOROTHY H. WILKEN, ex-officio Clerk of the  
Board of County Commissioners certify this to be a  
true and correct copy of the original filed in my office  
on March 13, 2001.  
DATED at West Palm Beach, FL on 3/23/01.  
DOROTHY H. WILKEN, Clerk  
By: Diane Brown D.C.